

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION**

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|--|---|--------------------------------|
| THREE ZERO THREE CAPITAL |) | |
| PARTNERS, LLC, on behalf of itself and |) | |
| 303 Energy Trading Alliance, LLC |) | |
| |) | |
| Plaintiff |) | |
| |) | No. 08 C 248 |
| v. |) | |
| |) | Judge Blanche M. Manning |
| WILLIAM JAMISON, JR., STEPHEN |) | Magistrate Judge Arlander Keys |
| HARPER, JEFFREY ONG and EVERGREEN |) | |
| ENERGY CAPITAL, LLC |) | |
| |) | |
| Defendants. |) | |

**DEFENDANT EVERGREEN ENERGY CAPITAL, LLC’S MOTION FOR SUMMARY
JUDGMENT AS TO COUNT III OF PLAINTIFFS’ VERIFIED COMPLAINT AT LAW**

Evergreen Energy Capital, LLC (“Evergreen”), by its attorneys and pursuant to Rule 56 of the Federal Rules of Civil Procedure, respectfully requests the entry of summary judgment in its favor as to Count III of the Verified Complaint at Law (“Complaint”) filed by Three Zero Three Capital Partners, LLC (“Three Zero Three”). There are no genuine issues of material fact as to Count III, and Evergreen is entitled to judgment as a matter of law. In support of this motion, Evergreen submits and incorporates the accompanying Memorandum in Support of its Motion for Summary Judgment as to Count III of Plaintiffs’ Verified Complaint at Law and separate Local Rule 56.1 Statement of Material Facts, and further states as follows:

1. On December 6, 2007, Three Zero Three filed its Complaint on behalf of itself and the Fund in the Circuit Court of Cook County, Illinois, County Department, Law Division on December 6, 2007. Evergreen along with defendants William Jamison, Jr., Stephen Harper, and Jeffrey Ong filed a Notice of Removal with this Court on January 11, 2008.

2. In Count III of the Complaint, Three Zero Three seeks to enforce a Line of Credit Note (the "Note") dated July 27, 2006 extended by Three Zero Three to Evergreen.

3. On July 27, 2006, Evergreen executed the Note with Three Zero Three for the principal amount of \$100,000.

4. The Note that Three Zero Three extended to Evergreen was a demand note. Accordingly, for Evergreen to be liable for repayment, Three Zero Three needs to demand repayment.

5. On or about April 25, 2007, Evergreen repaid \$37,500 of the principal amount on the Note. However, at this time, Three Zero Three did not demand repayment of the remaining \$62,500 of the principal outstanding. Indeed, at no point did Three Zero Three ever demand repayment for the principal outstanding on the Note.

6. Without Three Zero Three demanding repayment, Evergreen is not and cannot be liable, as a matter of law, for the \$62,500 principal outstanding on the Note.

7. Accordingly, the Court should grant summary judgment as to Count III of the Complaint.

For these reasons, as well as those stated in the supporting memorandum of law, Evergreen respectfully requests that this Court grant summary judgment in favor of Evergreen as to Count III of the Complaint pursuant to Fed. R. Civ. P.56, dismiss Count III against Evergreen with prejudice and award such further relief as this Court deems necessary and appropriate.

Dated: January 18, 2008

Respectfully submitted,

EVERGREEN ENERGY CAPITAL, LLC

/s/ Amy J. Carletti

One of its attorneys

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CERTIFICATE OF SERVICE

I, Amy J. Carletti, certify that service of the above instrument was accomplished pursuant to ECF upon counsel of record for plaintiffs, who is a Filing User according to the Court's General Order On Electronic Filing and by first-class U.S. Mail, postage prepaid upon:

Richard T. Reibman
Schwartz Cooper Chartered
180 N. LaSalle Street, Suite 2700
Chicago, Illinois 60601

on this 18th day of January, 2008.

/s/ Amy J. Carletti

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